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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,197	06/25/2003	Jean-Francois Ollivier	8707-2159	5782

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ORRICK, HERRINGTON & SUTCLIFFE, LLP
IP PROSECUTION DEPARTMENT
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EXAMINER

BERTRAM, ERIC D

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/607,197

Applicant(s)

OLLIVIER ET AL

Examiner

Eric D. Bertram

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4 and 8-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/28/2008 has been entered.

Response to Arguments

2. Applicant's arguments filed 1/28/2008 have been fully considered but they are not persuasive. Applicant argues that Ollivier does not disclose "a continuous thread of variable radius extending around and for a length along the cylindrical body." Applicant further argues that the Examiner supposedly conceded that Ollivier does teach or suggest a continuous thread that extends around the body for a length along the body in the previous office action. This is not true. In the previous office action, the Examiner merely pointed out that "the claims do not require a continuous thread that helps to define the "overall helicoid contour"". Nowhere in the action was it conceded that Ollivier does not teach this feature. As explained in the previous action, the thread is defined by each relief rising from and curving back into the lead body as one advances both around and towards the proximal end of the lead. As shown in figure 12, each relief has a different radius extending around the cylindrical body of the lead. The thread is considered to be continuous because one could trace their way from the distal

end and around each relief in a helicoid contour without removing their finger.

Therefore, Ollivier clearly teaches a continuous thread that extends around the body for a length along the body.

3. The 35 USC 102(b) and 103(a) rejections in view of Ollivier are still considered proper.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ollivier et al. (US 6,385,492, hereinafter Ollivier). Ollivier discloses a coronary probe for implantation in a vein of the coronary network for the stimulation of a left cavity of the heart (see abstract). Ollivier discloses that the probe has a flexible hollow sheath within an internal conductor 50 (see figure 3). As seen in figure 12, the distal end of the probe has an intermediate element 90 that has a cylindrical body bearing a retention structure, and the cylindrical body has a first diameter and a first axis at the median of the first diameter. The distal end includes a probe head with a protuberance at the tip and a stimulation electrode 54 that is connected to the internal conductor for contacting the vein in which it is implanted (col. 6, lines 29-40). Figure 12 further shows the details of the retention structure, which includes a plurality of annular reliefs 100 that form an “overall helicoid contour” with a rounded thread. The thread is defined by each relief

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rising from and curving back into the lead body as one advances both around and towards the proximal end of the lead. As shown in figure 12, each relief has a different radius extending around the cylindrical body of the lead. The thread is considered to be continuous because one could trace their way from the distal end and around each relief in a helicoid contour without removing their finger. The two reliefs have a variable radius, with the more proximal relief having a second diameter where the variable radius is at a maximum, and the second diameter is greater than the first diameter of the cylindrical body. Furthermore, there is a second axis formed at the median of the second diameter that is offset from, and parallel to, the first axis. The overall circular contour of the reliefs has an eccentric contour that is centered on the second axis at the point where the variable radius is at a maximum.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ollivier. Ollivier, as described above, discloses the applicant's basic invention, including the circular contour of the threads being on a second axis. As shown in figure 12, the axes of the threads are offset by a distance. Ollivier does not disclose, however, that the offset is between 15 and 25% of the diameter of the cylindrical body. However, upon reviewing the specification of the application, there does not appear to be any distinct reason or advantage for choosing the range of 15-25% of the diameter. Therefore, it would have been obvious matter of design choice to modify the axis of the threads by 15-25% since the applicant has not disclosed that having the threads off-axis in this range serves any particular purpose and it appears that the threads of Ollivier would perform equally well, regardless of the amount that they are offset.

10. Regarding claim 4, Ollivier, as described above, discloses the applicant's basic invention, including the overall circular contour having a diameter greater than the diameter of the cylindrical body. Ollivier does not disclose, however, that the overall

diameter is between 1.5 and 2 times the diameter of the cylindrical body. However, upon reviewing the specification of the application, there does not appear to be any distinct reason or advantage for choosing the range of 1.5-2 times the diameter. Therefore, it would have been obvious matter of design choice to modify the diameter of the overall circular contour by 1.5-2 times the diameter of the cylindrical body since the applicant has not disclosed that having the overall contour in this range serves any particular purpose and it appears that the threads of Ollivier would perform equally well, regardless of their diameter when compared to the cylindrical body.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Friday from 9:30-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. D. B./
Examiner, Art Unit 3766

/Mark W Bockelman/
Primary Examiner, Art Unit 3766